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Lois Kimbol
Direct Tel: 215.994.2537
Direct Fax: 215.994.2222
lois.kimbol@dechert.com

September 14, 2001

BOSTON

VIA FACSIMILE AND FIRST CLASS MAIL

BRUSSELS

Mr. Thomas Krueger
Multi-Media Branch II, Section I
U.S. Environmental Protection Agency
77 West Jackson Boulevard (C14-J)
Chicago, Illinois 60604

HARRISBURG

HARTFORD

LONDON

**Re: Special Notice of Liability - Eagle Zinc Company Site, Montgomery County,
Hillsboro, Illinois**

NEW YORK

Dear Mr. Krueger:

NEWPORT BEACH

PARIS

I have been authorized to send this letter jointly on behalf of T. L. Diamond & Company, Inc., The Sherwin-Williams Company, and Eagle-Picher Industries, Inc. in response to an undated Special Notice of Liability Letter for the Eagle Zinc Company site sent to the three companies and which was received by the three companies on or about July 16, 2001. That letter requested a "good faith" proposal within the 60-day moratorium period specified in Section 122(e) of the Comprehensive Environmental Response, Compensation and Liability Act. This letter constitutes the "good faith" proposals of the three companies.

PHILADELPHIA

PRINCETON

WASHINGTON

On July 31, 2001, company representatives met with you and other United States Environmental Protection Agency ("U.S. EPA") representatives in Region V offices in Chicago to discuss the Special Notice Letter. The parties agreed that priority should be given to developing a proposed Scope of Work. As you know, in fulfillment of that agreement, the companies, through their representatives, have engaged in extensive technical discussions with representatives of the U.S. EPA in regard to this site. Technical representatives of the companies, working together with representatives of Environ, have developed and submitted a detailed Scope of Work to address the technical issues raised in the Special Notice Letter. This Scope of Work was presented to the U.S. EPA and the Illinois Environmental Protection Agency at an August 28, 2001 technical meeting. Additional technical information requested by the U.S. EPA at that meeting has since been provided. It is our understanding that U.S. EPA is generally pleased with the technical progress made by the parties. As you know, another technical meeting is scheduled for September 19, 2001 in U.S. EPA offices in Chicago to continue development of the technical approach to be used in a focused Remedial Investigation/Feasibility Study at the Eagle Zinc site.

Because the focus of our collective efforts has been on developing the technical proposal, the companies have not as yet completed their negotiations concerning allocation of the

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costs to be associated with implementing the Scope of Work, etc. These discussions have been unusually complex because, as you know, certain circumstances at this site are somewhat unique. In light of the Judgment On Decision of the U.S. Bankruptcy Court for the Southern District of Ohio, Consolidated Case Nos. 1-91-00100, entered on June 6, 1996, Eagle-Picher wishes to make it clear that its participation in these discussions is without prejudice to its right to assert the defense and limitations of the bankruptcy court order. By the same token, all parties are participating in these discussions without waiving and without prejudice to any other rights or defenses the parties may have. Nonetheless, despite this outstanding issue, the companies collectively have sought diligently to develop an acceptable Scope of Work to respond to the Special Notice Letter and continue to discuss allocation issues. The companies agree that they will use their good faith efforts to finalize an allocation of cost-sharing among themselves within ten (10) calendar days of reaching a conceptual agreement with EPA on the Scope of Work, which we hope will occur at the September 19 meeting. Once the allocation has been established, the companies will also be in the position to demonstrate to EPA their capability to finance the RI/FS.

As part of their good faith efforts to be responsive to the special notice letter, the companies have developed preliminary comments on the necessary and appropriate modifications to the Administrative Order on Consent ("AOC") document attached to the special notice letter. (See attachment A.) We anticipate supplementing these comments as discussions with U.S. EPA continue. Should the technical discussions with U.S. EPA result in an approved Scope of Work, the companies presently anticipate that Environ will be the firm retained by the companies to perform the work.

As requested in the Special Notice Letter, the names and addresses of the individuals who will represent the respective companies in conducting negotiations with U.S. EPA are:

T. L. Diamond & Company, Inc.:	Lois Kimbol Joseph Freudenberg Dechert 4000 Bell Atlantic Tower 1717 Arch Street Philadelphia, Pennsylvania 19103-2793
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The Sherwin-Williams Company:	Donald J. McConnell The Sherwin-Williams Company 101 Prospect Avenue, N.W. Cleveland, Ohio 44115
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Eagle-Picher Industries, Inc.:

Eugene E. Smary
Warner Norcross & Judd LLP
900 Fifth Third Center
111 Lyon Street, N.W.
Grand Rapids, Michigan 49503

Francis P. McCune
Eagle-Picher Industries, Inc.
Suite 1300 580 Building
P.O. Box 779
Cincinnati, OH 45201

We are confident that given our discussions with the U. S. EPA to date, this letter constitutes the required response to the Special Notice of Liability Letter. If you have any questions or concerns please do not hesitate to contact the representatives of any of the companies. In addition, we are available to meet to begin discussions on the AOC at your convenience.

Sincerely,



Lois Kimbol

LK:jmh

Enclosure

cc: Donald J. McConnell, Esquire
Eugene E. Smary, Esquire
Francis P. McCune, Esquire
Joseph Freudenberg, Esquire

Eagle Zinc Site AOC Issues

1. The Administrative Order by Consent ("AOC") should be drafted to be clear that Respondents' obligations are limited to performing a focused Remedial Investigation/Feasibility Study (RI/FS) that is materially the same as the RI/FS scope of work ("SOW") to be attached to the AOC. The SOW to be attached will be based on the investigation proposal provided to the EPA by ENVIRON during the August 28, 2001 meeting. For instance, it should be clear that if any "Additional Work" was required pursuant to Section 2.4, such work would have to fall within the SOW attached to the AOC. Also, procedures similar to those applicable to Respondents should be included in Section 2.4 with respect to any additional work determined to be necessary by the EPA.
2. The draft AOC requires the simultaneous submittal of the RI and FS. It may be more appropriate for the RI and FS to be submitted sequentially. Preparation of the FS will require the use of the data, risk assessment and conclusions developed as part of the RI process. We would prefer that the EPA and the respondents be in agreement with the results of the RI prior to preparing the FS.
3. The AOC should be clear to differentiate Site RI/FS activities from Eagle Zinc's day to day operations. For instance, record retention and release reporting requirements should be applicable to RI/FS activities, not Eagle Zinc's operations.
4. Article I - The definition of what constitutes the "Site" should be determined after the technical scope of work is completed and agreed upon.
5. Article II - The term "heirs" should be removed from the AOC. All of the parties are corporate entities and inclusion of this term is inappropriate.
6. Article II - Why does the AOC need to be filed with the local Recorder of Deeds?
7. Article IV - The findings of fact need to be revised for accuracy.
 - A. The Site is located on Smith Road and Industrial Park Drive.
 - B. The AOC says "[a]pproximately 8,456 people live within a 4-mile radius of the Site and the nearest residential property is within 200 feet." We believe this information was taken from the 1994 Site Investigation Report prepared by the IEPA, which may no longer be accurate.
 - C. It is our understanding that Eagle-Picher sold the site to Sherwin-Williams in 1980, not 1979.
 - D. Zinc oxide is the primary product manufactured at the facility, not a by-product. Residues from the zinc oxide manufacturing process have been stored in piles at the site. Also, it

appears that operations may have commenced at the site as early as 1913 and may have included other zinc smelting operations and the production of sulfuric acid.

E. We are unaware of any U.S. EPA sampling activities at the site. Also, we do not believe it is appropriate to characterize any soil sampling results as indicating the presence of "high" levels of zinc, lead, cadmium, and arsenic. We do not believe arsenic or zinc were identified in soils at levels which represent a concern. It may be more appropriate to indicate "elevated levels of lead and cadmium" were detected.

F. The State of Illinois withdrew all counts of its lawsuit that involved alleged on-site disposal activities. Therefore, it does not appear appropriate to include a finding regarding this lawsuit.

8. Section IV.1. - EPA's right to reject a contractor or Project Coordinator should be limited to when EPA determines the party is unqualified to perform the work.
9. Article VI.2. - We assume that EPA's reference to "any other guidance that U.S. EPA uses in conducting a RI/FS" is intended to include only published or other guidance documents commonly used EPA
10. Sections VI.2.1 and 2.2. - The draft AOC does not provide Respondents an opportunity to address EPA comments on the RI/FS Work Plan or RI/FS Report and to revise the draft Work Plan or Report as necessary. Rather, the Respondents may be deemed in immediate violation of the AOC. Respondents should have the right to respond to EPA comments and submit revised reports.
11. Section VI.2.2. - Respondents are required to submit a RI/FS Report within 90 days of completion of the investigation activities. The schedule for submitting a RI/FS Report should be established in the RI/FS Work Plan. See also comment 2 regarding submittal of separate RI and FS Reports.
12. Section VI.4. - EPA access should be subject to Eagle Zinc's health and safety procedures and the health and safety procedures developed as part of the Site Health and Safety Plan.
13. Section VI.4. - EPA requires Respondents to reimburse EPA for any costs incurred by the EPA in obtaining off-site access. In the spirit of minimizing oversight costs, we request that this provision be eliminated.
14. Article VIII. - As was discussed during Respondents' initial meeting with the EPA, those provisions requiring reimbursement of past response costs should be deleted. Similarly, consistent with those discussions, collection of EPA oversight costs should be deferred until a mutually agreeable time or, at a minimum, until commencement of the Remedial Design/Remedial Action component of the project. In addition, we believe it is important

that appropriate language be incorporated to limit the amount of oversight costs incurred by the EPA.

15. Article IX. - We request that a third party neutral be utilized for dispute resolution.
16. Article XI. - Stipulated penalties should be reduced to reasonable amounts. Stipulated penalties should also not run if Respondents invoke the dispute resolution process.
17. Article XIV. – Appropriate covenants not to sue must be included in the AOC. These covenants must be sufficiently broad. Also, given our agreement regarding past costs, the covenants not to sue must be effective at a meaningful time.
18. Articles XIV and XV. - Covenants not to sue and contribution protection should run to Respondent's officers, directors, shareholders, employees and agents.
19. Article XVI. - Respondents should not be required to indemnify EPA from their own negligence.